BEFORE THE
WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 659

IN THE MATTER OF:	Served January 23, 1967
Application of D. C. Transit System, Inc., for Authority to Increase Fares.	Application No. 396 Docket No. 131

BEFORE EDWARD D. STORM, CHAIRMAN; H. LESTER HOOKER, VICE CHAIRMAN; GEORGE A. AVERY, COMMISSIONER

The Commission has before it a Motion for Reconsideration of Order No. 656, filed on January 23, 1967, by Lonnie King "individually and in behalf of the Young Democrats of the District of Columbia." Counsel for the movant are the same individuals who appeared on behalf of the movants in the Motion for Reconsideration denied by our Order No. 658, entered on January 20, 1967.*/

Under the terms of the Compact,** the filing of the Motion stays our Order No. 656 until we act on the Motion. Section 16 of the Compact provides, however, that the filing of the Motion shall not constitute a stay if the movant so consents. At the direction

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*/ The present motion is identical in its language to a paper styled "Supplement to Motion for Reconsideration of Order No. 656, which was filed on January 23, 1967, by the same movants whose motion was denied by our Order No. 658. Action on this "supplement" is taken in our Order No. 660, entered on January 23, 1967.

**/ Washington Metropolitan Area Transit Regulation Compact, 74 Stat. 1031 (1960).

of the Commission, an inquiry was made of counsel for movants whether they would file a consent that Order No. 656 not be stayed by their motion. This would have relieved the Commission from the pressure of time in considering the merits of the substantive arguments made by movants. Counsel for movants did not consent. Hence, we are constrained to act upon the Motion with dispatch. Unless we do so, there will be considerable doubt and uncertainty as to the fare structure in effect for D. C. Transit System, Inc.

The entire Commission has considered the contents of the Motion. As in the case of Order No. 658, our prompt action on the Motion does not indicate that the arguments put forth by movants have not been thoroughly and carefully considered.

We must first consider the question of standing. As previously noted, the movant is "Lonnie King, individually and in behalf of the Young Democrats of the District of Columbia." Unlike the Motion disposed of by our Order No. 658, where the movants were described as riders of D. C. Transit System, Inc., no further description is given. We have no way of knowing who Lonnie King is, what his interest in the proceeding is, and how he is affected by our Order No. 656. The Compact specifically states that motions for reconsideration may be filed by "<u>any person affected by any final order</u>." Compact, Section 16. The basis for the claim of standing under this statutory provision must be set forth in the Motion. Here, we are told nothing except the name of the movant.

In these circumstances, there is no basis on which to conclude that the moving party is affected at all by our Order No. 656. On this ground alone, the motion must be denied.

However, as with the Motion denied by our Order No. 658, we have decided to discuss the merits of the contentions made by the movant so that the fullest possible consideration will have been given to this motion.

First, the claim is made that the Commission has no power to enter an interim order of the kind set forth in Order No. 656. The argument was fully discussed in our Order No. 658 and must be rejected here, as it was there. The Compact confers broad powers upon us, particularly with regard to the kinds of orders we may enter. See Compact, Section 15. We have before us in this proceeding a record on which it can only be concluded that under the fares which existed before Order No. 656, the Company would have a net operating loss in 1967 of $726,033, plus an additional loss of over $1,000,000 due to interest expense. In other words, the Company would lose nearly $5,000.00 a day, beginning January 1, 1967. The law is clear that in these circumstances, the Company is entitled to a change in the fare structure which will at least enable it to recoup its expenses plus its interest cost. We have established an interim fare structure which, in practical effect, enables it to do this and nothing more. On the other hand, we were not satisfied that, on the basis of the record as it stood,

we could reach a well-founded conclusion as to the amount of "return" which should be allowed the Company. Hence, we have determined to hold further proceedings on this question. In the meanwhile, the Company each day would have been operating below breakeven level if stopgap measures, in the form of an interim fare adjustment, had not been taken forthwith. The inclusion of Section 15 in the Compact was obviously designed to provide the Commission with broad discretionary powers to enable it to act as it did here, and we are not restricted in our powers by the skeletal provisions of Section 6. In these circumstances, we have no doubt that the broad powers conferred upon us by the Compact permit the entering of an order such as our Order No. 656.

Next, movant claims that we have allowed an interim increase in fares on the basis of financial need, while at the same time, according to movant, we have stated that the Company's financial strength depends to some extent on the overall prospects of its parent in all its endeavors. Movant claims that this is inconsistent. The language from Order No. 656 quoted at page 2 of the Motion, where this point is discussed, is taken from that portion of our opinion in which we took up the fair rate of return. We were stating that <u>the return element</u> depends, in part, on the overall strength of the parent. However, we know of nothing in the law which would require the Company, regardless of other financial factors in the overall corporate structure, to lose money on its

transit operations. It is clear that such a loss would occur under the previously existing rate structure. Allowing fares which would avoid this loss is not inconsistent with our desire to consider the overall financial picture before determining the amount of profit to be allowed.

Next, movants claim that the interim order should not have been entered since the possibility of loss facing D. C. Transit was brought upon the Company by its own timing of its fare increase application. The argument seems completely without merit. The Commission is not playing a game in which the participants are to be faulted because of the moves they make or do not make. On the basis of the record before us, we have concluded that D. C. Transit would lose a substantial sum in 1967 if its fare structure were not changed. The law is clear that in these circumstances D. C. Transit is entitled to a change in the fare structure which would, at least, enable it to cover its expenses. Having reached that conclusion, it is encumbent upon us to take action thereon. We cannot shrug off the need for action on the ground that the Company has brought it upon itself by not asking for more money more quickly.

Moreover, we wish to dispel, in passing, the notion that our action was hasty and taken in a "crisis" atmosphere. The Commission has had under consideration for some time the financial situation of D. C. Transit. D. C. Transit had first come to the

Commission in August, 1966. Its filing at that time was rejected and it returned with the present application in October. This latter filing was accompanied by the prepared testimony and exhibits of all of the applicant's witnesses. A month ensued before hearings were held, so that the staff and protestants could study the applicant's testimony before commencing cross-examination. We held nine public sessions over the period of another month. We then took almost five weeks to review the record and formulate Order No. 656. No one was cut off from presenting evidence and all arguments made were fully considered. In this connection, we are not unaware that movants here and on the prior Motion for Reconsideration did not see fit to bring their arguments to our attention earlier. One of them, Mr. Payne, was a formal party to the proceeding but was inactive and never heard from until our Order No. 656 was entered.

The Commission, having fully considered the record, reached the conclusion that fare increases were needed in order to prevent actual losses of substantial amounts. This conclusion was not reached in haste, but was carefully and deliberately made. However, the Commission further concluded that it wished additional time to consider the question of "return." At that point we had to decide whether D. C. Transit must wait for any adjustment in fares until we were satisfied with the state of the record as to what constitutes a fair return. We concluded that, since the record was clear that losses would ensue until the fare structure was changed, it would be equitable to all concerned to let D. C. Transit meet its bare minimum financial needs while the inquiry into the matter of "return" continued. In other words, the interim relief was not granted as a hasty measure to meet a crisis situation, but to avoid making a final decision in haste.

Movants then argue that the Company has failed to meet its burden of proof and that it is this failure which calls for further proceedings. Hence, they claim D. C. Transit is not entitled to interim relief. However, this argument overlooks the fact that the Company did prove that it is entitled to the revenues which will be generated by the interim fare structure. The record on this point is adequate to support the action we have taken. Indeed, the Company also introduced evidence in the question of rate of return, the subject on which we wish to hear further evidence. The need for further proceedings is not based upon the Company's failure to introduce evidence on rate of return, but on the Commission's desire for a more complete record on the point. The fact that we desire this fuller record on the rate of return does not detract from the showing made by the Company which supports the interim relief granted.

Movant goes on to argue that Order No. 656 is in error in failing to require the Company to use accelerated depreciation for tax purposes. We carefully and thoroughly considered this question before entering Order No. 656. We see no reason to change the views expressed in that Order. In the absence of a constantly growing rate base, the use of accelerated depreciation constitutes only a deferral of taxes, not an avoidance thereof. We are not alone in this view. See Green, Proper Regulatory Treatment of Liberalized Depreciation, 78 Public Utilities Fortnightly, No. 1, p. 31 (July 7, 1966). The mere deferral of taxes could impose

a substantial burden on rate payers in future years. That burden could be increased if tax rates went up meanwhile. This is not an empty possibility, as is evidenced by the recent proposal by the President to increase taxes in the near future.

In any event, the question is largely academic at this stage. Order No. 656 allowed income tax expense in the amount of only $756.00. Our discussion of accelerated depreciation in that order was confined to matters of principle. When we arrived at the actual tax to be allowed, we allowed only that amount for reasons having nothing to do with accelerated depreciation.

Movants then argue, in paragraph 4 of their Motion, that the interim rates are unduly preferential or discriminatory as between riders in the District of Columbia and those in Maryland. They claim there is an increase of "some 12%" in token fares while certain Maryland intrastate and interstate zones were reduced. The facts, as they appear in the record, reveal a different picture, and they may be summarized as follows:

	Per Exhibit # 5	Per Exhibit #S-4	
	1967 Revenue Without Fare Changes	Interim Increases Granted	Revenue Forecast
Maryland local and interstate fares	$ 4,018,199	$ 593,709(26%)	$ 4,611,908(14%)
D.C. fares, including interline fares	27,291,729	1,653,403(74%)	29,945,132(86%)
Unallocated	59,126	----	59,126
Totals	$31,369,054	$2,247,112(100%)	$33,616,166

Statistically, then, it is indisputable that the Maryland and Interstate riders, who contribute 14% of the Company's revenue overall, must bear 26% of the increase, whereas the bulk of the riders, who contribute 86% of the revenue, are carrying only 74% of the total increase in fares.

Exhibit #S-4 shows, in more detail, the extent to which major groups of riders were affected by the fare changes:

	Present Average Fare	Proposed Average Fare	Increase	%
D.C. Cash fare	25¢	25¢	-0-	-0-
D.C. Token	21-1/4¢	23-3/4¢	2-1/2¢	11.8%
Interstate local (all zones)	22.7¢	23.4¢	0.7¢	3.1%
Intrastate Maryland (all zones)	22.7¢	30.53¢	7.83¢	34.5%
Interstate Express (all zones)	47.4¢	57.89¢	10.49¢	22.1%
Silver Rocket Express	45¢	50¢	5¢	11.1%
Interline	17-1/2¢	22-1/2¢	5¢	28.6%
Capitol Hill Express	50¢	60¢	10¢	20.0%
Stadium	50¢	60¢	10¢	20.0%

The above tabulation is presented only to show movants' "some twelve percent" increase in the token fare in its proper context--the Maryland intrastate and the interstate express increases are much greater, in the absolute as well as percentagewise. Moreover, many of the reductions in Maryland fares will affect a minimal number of riders. That we have followed accepted principles of rate construction is demonstrated by the discussion at pp. 27 - 29 of our Order No. 656, as printed.

Finally, movant claims that the statutory basis for our existence is entirely unconstitutional because it conflicts with Article I, Section 8 of the Constitution of the United States. That section grants Congress the power "to exercise exclusive legislation in all cases whatsoever" over the District of Columbia. It is claimed that this language precludes the grant of power to this Commission, which is made up of members appointed by the District of Columbia, Maryland and Virginia.

This argument is not new to us. It was raised, and rejected, in WMATC v. Hill, Civil Action No. 817-65 (D.C.D.C. 1965) (Unreported). It was there pointed out to the court that in the exercise of its power to govern the District of Columbia, the Congress has, over the years, found it necessary, as have all legislatures, to delegate the administration of its enactments to various administrative bodies. When such laws are properly drawn to provide legislative standards and guides to be followed, the courts have uniformly held that the authority so conferred does not constitute a delegation of legislative authority in contravention of the separation of power doctrine of constitutional law. This legislation clearly falls within the accepted legislative practice of delegating the powers of administration.

Cases testing the constitutionality of various delegations of authority to the government of the District of Columbia have distinguished between general and local legislation, and have held that the latter may properly be delegated by the Congress

to the local government of the District of Columbia, whatever its form. Corporation v. Eaton, Fed. Cas. No. 17,228, 4 Cranch, C.C. 352, 4 D. C. 352. Similarly, it was very early held that Congress may grant to the District of Columbia the same power as a state legislature may grant to a municipality. Cooper v. District of Columbia, McArthur and M 250, 11 D.C. 230. Over the years Congress has delegated to the District of Columbia authority to perform a wide variety of governmental functions. In times past, broad legislative powers have been delegated to legislative assemblies in the District of Columbia. None of these have been held to be prohibited delegations of the legislative power. (See District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953)). Does the "exclusive power" clause give Congress less power than a state legislature? This cannot be.

As there has been no delegation of legislative power, the "exclusive" test of the District of Columbia clause is neither reached nor breached. Further, the safeguards built into the Compact in Article VI and IX assure and protect federal control over transit in the District of Columbia and prevent the States from interferring with or embarrassing the Federal Government in its operations at the seat of government.

The Constitution does not deny Congress the right to use the interstate compact as a necessary tool for governing the District of Columbia, and the District of Columbia has in fact participated in three prior compacts, namely, relating to the Chesapeake & Ohio Canal (4 Stat. 101, 802); the Potomac Valley

pollution and conservation compact (50 Stat. 884); and the interstate civil-defense compact (68 Stat. 39). There is also the recent rail rapid-transit compact. Thus, the movant's position flies in the face of Congressional precedents.

Moreover, the Congress has not given legislative control to the compacting states nor allowed them a share in legislating for the District of Columbia. The language of the Compact is that of the Congress, arrived at in conference with the contracting States. The 84th Congress appropriated funds to enable the National Capital Planning Commission and the National Capital Regional Planning Council to conduct a joint survey of the mass transit needs of the metropolitan area. From this action evolved the recommendation for, and the ultimate adoption of, the Compact. (H.R. Report No. 1621, 86th Cong., 2d Sess., pp. 4-5.) The Legislatures of Virginia and Maryland cannot change the existing language of the Compact without corresponding legislation by Congress for the District of Columbia. Thus, only the Congress can "legislate", and has "legislated", for the District of Columbia. The fact that Virginia and Maryland have adopted a similar law does not indicate that an attempt has been made to dilute or share the sovereignty of the Congress over the District of Columbia, or that the Compact States are legislating for the District of Columbia. The administration of the law is being shared, but this is not a delegation of legislative power. This is particularly true in

view of the retention of control over transportation solely in the District of Columbia as spelled out in Articles VI and IX.

Like the court in the Hill case, supra, we are not persuaded that there is any constitutional defect in the Commission's validity.

The Commission is of the opinion and finds that the Motion for Reconsideration of Order No. 656 should be denied.

THEREFORE, IT IS ORDERED:

That the Motion for Reconsideration of Lonnie King "individually and in behalf of the Young Democrats of the District of Columbia", filed in this proceeding on January 23, 1967, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

Edward D. Storm
Chairman